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10 UNITED STATES DISTRICT COURT
11 CENTRAL DISTRICT OF CALIFORNIA
12 SOUTHERN DIVISION

13 SONY CORPORATION, A Japanese
corporation,

14 Plaintiff,

15 vs.

16 VIZIO INC., A California corporation,

17 Defendant.
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CASE NO. CV-01135-AHS-AN

**SONY'S NOTICE OF MOTION AND
MOTION FOR RECONSIDERATION
OF TRANSFER ORDER;
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT
THEREOF**

The Honorable Alicemarie H. Stotler

[Concerns Order by the Honorable R.
Gary Klausner Declining Intra-District
Transfer]

Hearing Date and Time: December 8,
2008, 10:00 a.m.

1 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

2 PLEASE TAKE NOTICE that plaintiff Sony Corporation ("Sony")
3 will, and hereby does, move the Honorable Judge R. Gary Klausner to reconsider his
4 October 24, 2008 Order declining to transfer the case captioned Sony Corp. v.
5 Vizio, Inc., CV08-01135 AHS (ANx) (the "Vizio Action") to his docket. This
6 Motion is made pursuant Local Rule 7-18, on the grounds that material facts
7 presented to the Court were overlooked and not considered in its decision to decline
8 transfer of the Vizio Action.

9 This Motion is based on this Notice of Motion and Motion, the
10 accompanying Memorandum of Points and Authorities, the Declaration of Charlie
11 Y. Chou filed concurrently herewith, and all other matters of which the Court may
12 take judicial notice.

13 Statement of Rule 7-3 Compliance

14 This motion is made following the conference of counsel pursuant to
15 L.R. 7-3 which took place on November 13, 2008. On November 19, 2008, Vizio
16 Inc. ("Vizio") notified Sony that it opposes this motion.

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19 DATED: November 19, 2008

Respectfully submitted,

20 QUINN EMANUEL URQUHART OLIVER &
21 HEDGES, LLP

22 By  FOR
23 Kevin P.B. Johnson
24 Attorneys for Sony Corporation
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MEMORANDUM OF POINTS AND AUTHORITIES

Introduction

This is a motion for reconsideration of the Court's denial of an intra-district transfer of this case (the "Vizio Action") to the docket of Judge Klausner, where Sony already has a related patent infringement case pending entitled Sony Corp. v. Westinghouse Digital Electronics, LLC, CV08-03934 RGK (FMOx) ("Westinghouse Action"). The Westinghouse and Vizio Actions involve the identical patents and substantially similar accused products. Accordingly, a transfer of the Vizio Action will benefit judicial economy by preventing the unnecessary and inefficient duplication of this Court's efforts and eliminate the risk of inconsistent substantive rulings. Based on the Court's Order declining transfer, however, it appears that the overlap of the patents asserted in the two cases was not considered, as boxes on the form order that relate to that issue were not marked. Accordingly, the Court should reconsider its order denying transfer of the Vizio Action and allow it to be properly transferred to the docket of Judge Klausner as a related case.

Factual Background

On June 16, 2008, Sony filed a complaint for multiple counts of patent infringement against Westinghouse. Declaration of Charlie Y. Chou, ("Chou Decl."), Ex. A. In the Westinghouse Action, Sony asserted that Westinghouse infringed seven of its patents, U.S. Patent Nos. 5,434,626, 5,583,577, 5,684,542, 5,731,847, 5,751,373, 6,111,614, and RE38,055. Id. On September 16, 2008, the Court granted a joint stipulation allowing Sony to file its First Amended Complaint in the Westinghouse Action, thereby adding claims of infringement of three additional patents, U.S. Patent Nos. RE40,468, 6,778,182, and 6,661,472. Chou Decl., Exs. B and C. The patents asserted in the Westinghouse Action concern

1 various aspects of the display, interface, and data transmission technology of digital
2 display devices.

3 On October 10, 2008, Sony filed suit against Vizio, another digital
4 television manufacturer, and the case was assigned to Judge Stotler. Chou Decl.,
5 Ex. D. In the Vizio Action, Sony asserted all ten of the patents at issue in the
6 Westinghouse Action and four additional patents relating generally to display
7 technology: U.S. Patent Nos. 5,285,285, 5,212,553, 5,168,362 and 5,539,425. Id.
8 Concurrently with the filing of the Vizio Action, Sony filed a Notice of Related
9 Case and a Civil Cover Sheet, both of which noted that the Westinghouse Action
10 and the Vizio Action overlapped with respect to the patents-in-suit and the
11 determinations of questions of law and fact. Chou Decl., Ex. E and F. In addition,
12 the Civil Cover Sheet also noted the potential for substantial duplication of labor if
13 the two cases were adjudicated separately. Chou Decl., Ex. F.

14 In accordance with the typical process in this district for handling
15 related cases, intra-district transfer of the Vizio Action to the docket of Judge
16 Klausner was sought. However, on October 24, 2008, Judge Klausner declined to
17 accept transfer of the case. In declining to accept transfer, the Court expressed the
18 view that the two cases were "not related." Chou Decl. Ex. G.

19 In the section of the Court's Order entitled "REASON FOR
20 TRANSFER AS INDICATED BY COUNSEL," the Court explicitly indicated that
21 it considered the fact that the two cases called for determinations of the same or
22 substantially related or similar questions of law and fact (indicated by the check
23 mark next to box "B"). However, two other factors, both identified in the Notice of
24 Related Case and Civil Cover Sheet, appear to have been overlooked and not
25 considered (as indicated by the *lack* of a check mark next to their respective
26 identifiers ("C" and "D")). Chou Decl., Ex. G. Specifically, the factors of
27 substantial duplication of labor if the two cases were tried separately (as indicated
28 by the identifier "C") and the fact that the two cases involve the same patents (as

1 indicated by the identifier "D") were not acknowledged as factors presented by
2 counsel for the Court's consideration. Id.

3 On November 14, 2008, Sony filed its First Amended Complaint for
4 Patent Infringement in the Vizio Action, which removed four previously asserted
5 patents from the case: U.S. Patent Nos. 5,285,285, 5,212,553, 5,168,362 and
6 5,539,425. Chou Decl., Ex. H. As a result, the 10 patents remaining in the Vizio
7 Action are identical to the 10 patents at issue in the Westinghouse Action.

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9 **Argument**

10 Sony respectfully moves to reconsider Judge Klausner's Order
11 declining transfer of the Vizio Action. "A motion for reconsideration of the
12 decision of any motion may be made only on grounds of...a manifest showing of a
13 failure to consider material facts presented to the court before such decision." Civil
14 L.R. 7-18(c).

15 Judge Klausner's Order declining transfer of the Vizio Action did not
16 acknowledge the consideration of two material facts presented in Sony's Notice of
17 Related Case and Civil Cover Sheet. Specifically, the factors of substantial
18 duplication of labor if the two cases were tried separately and the fact that the two
19 cases involve the same patents were not acknowledged as factors considered in
20 Judge Klausner's Order. Chou Decl., Ex. G. Accordingly, it appears that the Court
21 overlooked and failed to consider these two material facts.

22 The Westinghouse and Vizio Actions involve the identical ten patents
23 and substantially similar accused products. Thus, a transfer will benefit judicial
24 economy by preventing the unnecessary and inefficient duplication of this Court's
25 efforts and eliminate the risk of inconsistent substantive rulings. For example, if the
26 Vizio Action were not transferred, both Judge Klausner and Judge Stotler would
27 engage in claim construction for the same 10 patents and would consider summary
28 judgment motions applying those patents against the same types of products, with a

1 corresponding duplication of efforts and risk of inconsistent rulings. Similarly, both
2 Judge Klausner and Judge Stotler would likely address the same prior art issues as
3 well.

4 Accordingly, the Court's Order declining intra-district transfer of the
5 Vizio Action should be reconsidered, and it should be transferred to the docket of
6 Judge Klausner.

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8 DATED: November 19, 2008

Respectfully submitted,

9 QUINN EMANUEL URQUHART OLIVER &
10 HEDGES, LLP

11 By  /FOR
12 Kevin P.B. Johnson
13 Attorneys for Sony Corporation
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